

## **REMARKS**

### **Claims**

Claims 11-28 are pending in this application. Claims 11, 13 and 20 have been amended. No new matter has been added.

### **Double Patenting Rejection Under 35 U.S.C. §101**

Claims 11-28 stand rejected under 35 U.S.C. §101 as claiming the same invention as that of claims 1-10 of prior U.S. Patent No. 6,738,730.

Independent claims 11 and 20 have been amended in order to overcome the double patenting rejection. In particular, the limitation “in a range between an upper limit and a lower limit” has been added to these claims. This limitation is supported at, e.g., in the specification at page 7, lines 19-22, and FIG. 5. Further, it is noted that independent claims 1 and 10 of prior U.S. Patent No. 6,738,730 are directed to a “performance control apparatus” and a “method of controlling performance in a data processing apparatus”, respectively, while independent claims 11 and 20 of the present application, as amended, are directed to a “computer implemented method of controlling a performance of a computer” and a “computer implemented program for controlling performance in a computer”. Thus, claims 11 and 20 of the present invention include subject matter different from that of prior U.S. Patent No. 6,738,730.

### **Non-Statutory Subject Matter Rejection under 35 U.S.C. §101**

Claims 11-28 stand rejected under 35 U.S.C. §101, wherein the rejection asserts that the

claimed invention is directed to non-statutory subject matter. In response, claims 11 and 20 have been amended. In particular, claim 11 is now directed to a "computer implemented method of controlling a performance of a computer", while claim 20 is now directed to a "computer implemented program for controlling performance of a computer".

Additionally, it is noted that controlling the performance of an operation processing means in a range between an upper and lower limit is a tangible result produced by the claimed invention. Performance is represented in the claims by the number of instructions executed per unit time, which is measured at predetermined intervals. Further, the history information of the performance measured by the monitoring means is stored in the memory means, which also is a tangible result. Accordingly, the amendments to claims 11 and 20 traverse the rejection under 35 U.S.C. §101 for non-statutory subject matter.

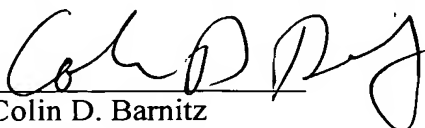
### CONCLUSION

In view of the foregoing, Applicant respectfully requests that a timely Notice of Allowance be issued in this case.

Respectfully submitted,

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